

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BETTY GUZMAN, on behalf of herself
and all others similarly situated

Plaintiffs,

vs.
BRIDGEPOINT EDUCATION, INC.,
ASHFORD UNIVERSITY, and
UNIVERSITY OF THE ROCKIES,

Defendants.

CASE NO. 11cv69 WQH (WVG)

ORDER

HAYES, Judge:

The matters before the Court are the Motion to Dismiss (ECF No. 12) and Motion to Strike (ECF No. 13) filed by Defendants Bridgepoint Education, Inc., Ashford University, and University of the Rockies.

I. Background

On January 12, 2011, Plaintiff Betty Guzman initiated this action by filing the Complaint. (ECF No. 1). On March 15, 2011, Defendants Bridgepoint Education, Inc., Ashford University, and University of the Rockies filed a Motion to Dismiss and a Motion to Strike the Complaint. On April 4, 2011, Plaintiff filed an Opposition to the Motions. On April 11, 2011, Defendants Bridgepoint Education, Inc., Ashford University, and University of the Rockies filed replies.

II. Allegations of the Complaint

Plaintiff proposes a nationwide class action “composed of all persons who enrolled in

1 and/or attended classes at either of the two academic institutions operated by Bridgepoint
2 Education, Inc. ('Bridgepoint' or the 'Company') – Ashford University ('Ashford') or
3 University of the Rockies ('The Rockies') – during the period approximately from March 1,
4 2005 through the present (the 'Class Period')." (ECF No. 1 at ¶ 1).

5 Plaintiff generally alleges that Bridgepoint, the company that owns and operates
6 Ashford and The Rockies, "engaged in a pattern of improper and unlawful conduct in order
7 to recruit students and over-charge the federal government for federal financial aid." *Id.* at ¶
8 6. Plaintiff contends that Defendants use "standardized, misleading recruitment tactics"
9 including: (a) hiding federal disclosures on their website and requiring students to enroll before
10 accessing the federal disclosures; (b) "misrepresent[ing] the true cost of attendance by falsely
11 claiming that Ashford and The Rockies provide 'some of the lowest cost tuition programs
12 available,' quoting to prospective students false and misleading tuition rates for degree
13 programs, and failing to disclose substantial non-tuition costs such as administrative fees"; (c)
14 misrepresenting the quality of academic instruction; (d) misrepresenting the status of "The
15 Rockies' accreditation with the American Psychological Association ('APA') and ability to
16 qualify students to obtain professional psychology licensure"; (e) misrepresenting
17 employability and earnings potential for graduated students. *Id.* at ¶ 6(a)-(e). Plaintiff alleges
18 that "[s]tudents relied on these misrepresentations when deciding to enroll" *Id.* at ¶ 8.

19 Plaintiff alleges that Bridgepoint improperly hides information from prospective
20 students on its website through a "sophisticated - and misleading - tactic" of directing internet
21 search engine results to a "basic site that offers vague and misleading praise for the university
22 and an option to enroll online." *Id.* at ¶ 48. Plaintiff alleges that "[a]lthough more
23 comprehensive websites exist for both schools, they cannot be easily accessed by prospective
24 students without previously knowing the exact web addresses." *Id.* Plaintiff alleges that
25 Bridgepoint "misleads students by affirmative misrepresentations or material omissions
26 regarding the true cost of attending its universities, the quality of academic instruction,
27 students' post-graduation employability, and students' needs for federal student loans and their
28 repayment obligations." *Id.* at ¶ 46. Plaintiff alleges that "Defendants also makes uniform

1 written and scripted oral misrepresentations about the quality, reputation, and marketability
2 of the education earned through the academic programs.” *Id.* at ¶ 58.

3 Plaintiff allege that Bridgepoint “also expects enrollment advisors to mislead
4 prospective students regarding how much of their degree program will be covered by federal
5 financial assistance.” *Id.* at ¶ 68. Plaintiff alleges that “Bridgepoint provides incentive
6 payments to its enrollment advisors for recruiting and securing student enrollment, and fosters
7 a competitive environment such that an enrollment advisor's success or failure is determined
8 by the number of prospective students the advisor actually enrolls.” *Id.* at ¶ 78.

9 Plaintiff alleges that Bridgepoint “specifically targets veterans and active duty military
10 personnel...” *Id.* at ¶ 69. “Bridgepoint’s motivation is transparent ... the money Bridgepoint
11 and other for-profit universities receive from veterans via the Post-9/11 GI Bill does not count
12 towards the 90% limit these schools can receive in federal funding.” *Id.* at ¶ 70.

13 Plaintiff Betty Guzman alleges that she “enrolled in online courses with Ashford in
14 2006 after speaking with an online enrollment advisor.” *Id.* at ¶ 20. Plaintiff Guzman
15 “completed approximately 20 online courses.” *Id.* Plaintiff Guzman alleges that Ashford
16 claims that she owes them “over \$3,600, and refuses to issue her diploma.” *Id.*

17 Plaintiff asserts claims for (1) breach of contract; (2) breach of the implied covenant of
18 good faith and fair dealing; (3) violation of California Business and Professions Code section
19 17200 (“Unfair Competition Law”); (4) violation of California Business and Professions Code
20 section 17500 (“False Advertising Act”); (5) violation of the Consumer Legal Remedies Act
21 (“CLRA”); and (6) negligent misrepresentation.

22 **III. Standard of Review**

23 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a
24 claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil
25 Procedure 8(a) provides: “A pleading that states a claim for relief must contain ... a short and
26 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
27 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable
28 legal theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica*

1 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

2 To sufficiently state a claim for relief and survive a Rule 12(b)(6) motion, a complaint
 3 “does not need detailed factual allegations” but the “[f]actual allegations must be enough to
 4 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
 5 555 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
 6 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause
 7 of action will not do.” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to
 8 dismiss, a court must accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*,
 9 ___ U.S. ___, 129 S. Ct. 1937, 1950 (2009). However, a court is not “required to accept as true
 10 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
 11 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “In sum,
 12 for a complaint to survive a motion to dismiss, the non-conclusory factual content, and
 13 reasonable inferences from that content, must be plausibly suggestive of a claim entitling the
 14 plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations
 15 omitted).

16 **IV. Discussion**

17 **A. Breach of Contract - Claim One** 18 **Breach of the Implied Covenant of Good Faith & Fair Dealing - Claim Two**

19 Defendants contend that Plaintiff’s claim for breach of contract fails to allege that
 20 Defendants intended to create a contract. Defendants contend that Plaintiff “does not allege
 21 any specific contractual provision or provisions that Defendants purportedly violated.” (ECF
 22 No. 12-1 at 22). Defendant contends that Plaintiff fails to state a claim against The Rockies
 23 on the grounds that Plaintiff was enrolled at Ashford, not The Rockies. Defendants contend
 24 that Plaintiff has failed to allege the existence of any contract upon which the implied covenant
 25 of good faith and fair dealings can be based.

26 Plaintiff contends that “[w]hile the complaint does not identify the contract forming
 27 the basis of these claims [breach of contract and breach of the implied covenant of good faith
 28 and fair dealings] by name, it clearly implies that this contract was the enrollment agreement
 the parties executed at the time of Plaintiff’s matriculation.” (ECF No. 15 at 19). Plaintiff

1 contends that “If the Court finds this implication insufficient, Plaintiff requests leave to
2 amend.” *Id.*

3 “A cause of action for breach of contract requires proof of the following elements: (1)
4 existence of the contract; (2) plaintiff’s performance or excuse for nonperformance; (3)
5 defendant’s breach; and (4) damages to plaintiff as a result of the breach.” *CDF Firefighters*
6 *v. Maldonado*, 158 Cal. App. 4th 1226, 1239 (2008) (citation omitted). Contract formation
7 requires “a meeting of the minds or an agreement.” *Mulder v. Mendo Wood Products, Inc.*,
8 225 Cal. App. 2d 619, 632 (1964).

9 In this case, Plaintiff alleges that she entered into a contract with Defendants under
10 which “Defendants agreed to provide affordable postsecondary education at among the lowest
11 rates of comparable institutions, and that the education provided would prepare and qualify
12 Plaintiff and members of the Class for numerous professional occupations after graduation,
13 including professions requiring post-graduation licensure.” (ECF No. 1 at ¶ 88). Plaintiff
14 alleges that she complied with her obligations but Defendant breached the contract. Plaintiff
15 also alleges that “Defendants breached the implied covenant of good faith and fair dealing in
16 their contracts with Plaintiff ... by taking steps to interfere with the ability of the [Plaintiff] to
17 receive the benefits promised by Defendants.” *Id.* at ¶ 96.

18 To the extent that Plaintiff alleges a contract was formed by Defendants promising to
19 provide an affordable education at a low price which would qualify her for post-graduate
20 professional licensure; Plaintiff has failed to allege facts sufficient to show a meeting of the
21 minds or mutual intent to contract. The Court finds that Plaintiff’s conclusory allegations
22 regarding breach of contract are insufficient to “provide the ‘grounds’ of [her] ‘entitle[ment]
23 to relief.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. at 555 (quotation omitted); *see also Ashcroft*
24 *v. Iqbal*, 129 S. Ct. at 1950.

25 “Every contract imposes upon each party a duty of good faith and fair dealing in its
26 performance and its enforcement.” *Marsu, B.V. v. Walt Disney Co.*, 185 F.3d 932, 937 (9th
27 Cir. 1999) (applying California law). That duty, known as the covenant of good faith and fair
28 dealing, requires “that neither party ... do anything which will injure the right of the other to

1 receive the benefits of the agreement.” *Andrews v. Mobile Aire Estates*, 125 Cal. App. 4th 578,
 2 589 (2005). “The implied covenant of good faith and fair dealing is limited to assuring
 3 compliance with the express terms of the contract and cannot be extended to create obligations
 4 not contemplated by the contract.” *Pasadena Live, LLC v. City of Pasadena*, 114 Cal. App. 4th
 5 1089, 1094 (2004) (quotation omitted); *see also Racine & Laramie, Ltd. v. Dep’t of Parks &*
 6 *Recreation*, 11 Cal. App. 4th 1026, 1032 (1992).

7 Plaintiff has failed to allege facts sufficient to show the existence of an contract.
 8 Accordingly, the Court finds that Plaintiff has failed to allege facts sufficient to show that
 9 Defendants injured her right to receive the benefits of the agreement. The Court concludes that
 10 the Complaint fails to allege sufficient facts to support a claim for breach of the implied
 11 covenant of good faith and fair dealing. Accordingly, Defendants’ Motion to Dismiss
 12 Plaintiff’s first claim for breach of contract and second claim for breach of implied covenant
 13 of good faith and fair dealing is granted.

14 **B. California’s Unfair Competition Law - Claim Three**
 15 **False Advertising Act - Claim Four**
 16 **Consumer Legal Remedies Act - Claim Five**

17 Defendants contend that Plaintiff lacks constitutional standing and lack standing
 18 pursuant to California Proposition 64 to assert claims for violation of California’s Unfair
 19 Competition Law, the False Advertising Act, and the Consumer Legal Remedies Act on the
 20 grounds that Plaintiff cannot establish injury-in-fact as a result of Defendants’ actions.
 21 Defendants also contend that “there are no allegations that Guzman heard, saw, or read any
 22 alleged false statements.” (ECF No. 12-1 at 12). Defendants contend that Plaintiff may not
 23 assert any claims against the Rockies on the grounds that Plaintiff does not allege that she
 24 attended the Rockies or had any contact with the Rockies. Defendants allege that the claims
 “sound in fraud” and are not alleged with the requisite level of particularity. *Id.* at 15.

25 Plaintiff contends that she has standing to assert her claims on the grounds that she
 26 “relied on the defendant’s misrepresentations and omissions in deciding to enroll at one of the
 27 Bridgepoint’s academic institutions, and because she suffered injury through such enrollment.”
 28 (ECF No. 15 at 10). Plaintiff contends that “Bridgepoint’s standing argument is really an a

1 attack on the typicality of Plaintiff's claims and adequacy of her representation....” *Id.* at 12.
2 Plaintiff contends that her claims for violation of California's Unfair Competition Law, the
3 False Advertising Act, and the Consumer Legal Remedies Act are not subject to a heightened
4 pleading standard, and “[f]or any allegations to which this Court does apply the heightened
5 pleading standard of Rule 9(b), Plaintiff respectfully requests leave to amend.” *Id.* at 18 n.4.

6 The Unfair Competition Law (“UCL”) permits civil recovery for “any unlawful, unfair
7 or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising
8” Cal. Bus. & Prof. Code section 17200. The False Advertising Act (“FAA”) prohibits a
9 “corporation or association ... [from] induc[ing] the public to enter into any obligation relating
10 thereto, [or] to make or disseminate ... any advertising device... any statement, concerning ...
11 those services ... which is untrue or misleading” Cal. Bus. & Prof. Code section 17500.
12 The Consumer Legal Remedies Act (“CLRA”) proscribes deceptive practices in the sale of
13 goods and services. Cal. Civil Code section 1750 et seq.

14 Article III of the United States Constitution restricts federal judicial power to the
15 adjudication of “Cases” or “Controversies.” U.S. Const. art. III, § 2. Proposition 64 limits
16 standing to sue under the UCL and FAA to those who have suffered an injury-in-fact as a
17 result of the conduct which violated the UCL and FAA. *See Californians For Disability Rights*
18 *v. Mervyn's, LLC*, 39 Cal. 4th 223, 227 (Cal. 2006) (“After Proposition 64, ... a private person
19 has standing to sue only if he or she has suffered [an] injury in fact and has lost money or
20 property as a result of such unfair competition.”) (quotation omitted); *see also* Cal. Bus. &
21 Prof. Code section 17204 (stating that an individual may sue “who has suffered injury in fact
22 and has lost money or property as a result of the unfair competition.”); Cal. Bus. & Prof. Code
23 section 17535 (stating that an individual may sue who has suffered injury in fact and has lost
24 money or property as a result of a violation of [the FAA].). The CLRA limits standing to sue
25 to those who have suffered an injury-in-fact. *See* Cal. Civil Code section 1780 (stating that
26 “[a]ny consumer who suffers any damage as a result of ... a method, act, or practice declared
27 to be unlawful by [by the CLRA] may bring an action against that person.”); *see also Meyer*
28 *v. Sprint Spectrum L.P.*, 45 Cal. 4th 634, 641-46 (Cal. 2009). A plaintiff must also show that

1 the injury-in-fact was the result of the defendant's violation of the UCL, FAA, or CLRA. *See*
 2 *In re Tobacco II Cases*, 46 Cal. 4th 298, 326-27 (Cal. 2009); *see also Laster v. T-Mobile USA,*
 3 *Inc.*, 407 F. Supp. 2d 1181, (S.D. Cal. 2005) ("after Proposition 64, a person seeking to
 4 represent claims on behalf of others must show that (1) she has suffered actual injury-in-fact,
 5 and (2) such injury occurred as a result of the defendant's alleged unfair competition or false
 6 advertising.").

7 In this case, Plaintiff Betty Guzman alleges that she "enrolled in online courses with
 8 Ashford in 2006 after speaking with an online enrollment advisor." (ECF No. 1 at ¶ 20).
 9 Plaintiff has failed to allege sufficient facts to show that Defendants made any
 10 misrepresentations to her. Plaintiff alleged that she "completed approximately 20 online
 11 courses." *Id.* Plaintiff alleges that Ashford claims that she owes it "over \$3,600, and refuses
 12 to issue her diploma." *Id.* Although Plaintiff alleges that she was injured, the Court finds that
 13 Plaintiff has failed to allege sufficient facts to show that she relied on any misrepresentations
 14 by Defendants and suffered an injury-in-fact caused by Defendants' conduct. Plaintiff has also
 15 generally alleged that Bridgepoint has made several misrepresentations and that the class
 16 members and Plaintiff relied upon the misrepresentations. The Court finds that Plaintiff's
 17 conclusory allegations regarding general misrepresentations do not "provide the 'grounds' of
 18 [their] 'entitle[ment] to relief.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. at 555; *see also Ashcroft*
 19 *v. Iqbal*, 129 S. Ct. at 1950. The Court finds that pursuant to Proposition 64, Plaintiff does not
 20 have standing to assert claims based on these general misrepresentations. Accordingly,
 21 Defendants' Motion to Dismiss Plaintiff's third claim for violation of the Unfair Competition
 22 Law, fourth claim for violation of the False Advertising Act, and fifth claim for violation of
 23 the Consumer Legal Remedies Act, and sixth claim for negligent misrepresentation is granted.

24 **C. Negligent Misrepresentation - Claim Six**

25 Defendants contend that Plaintiff has failed to state a claim for negligent
 26 misrepresentation on the grounds that "there are no allegations that Guzman heard, saw, or
 27 read any alleged false statements." (ECF No. 12-1 at 12). Defendants contend Plaintiff may
 28 not assert any claims against the Rockies on the grounds that Plaintiff does not allege that she

1 attended the Rockies or had any contact with the Rockies.

2 Plaintiff contend that she “relied on the defendant’s misrepresentations and omissions
3 in deciding to enroll at one of the Bridgepoint’s academic institutions ...” (ECF No. 15 at 10).
4 Plaintiff contends that her claims for negligent misrepresentation is not subject to a heightened
5 pleading standard.

6 The elements of a claim for fraud are: “(1) a misrepresentation, which includes a
7 concealment or nondisclosure; (2) knowledge of the falsity of the misrepresentation, i.e.,
8 scienter; (3) intent to induce reliance on the misrepresentation; (4) justifiable reliance; and (5)
9 resulting damages.” *Cadlo v. Owens-Illinois, Inc.*, 125 Cal. App. 4th 513, 519 (2004) (citing
10 *Small v. Fritz Cos., Inc.*, 30 Cal. 4th 167, 173 (2003)). “The same elements comprise a cause
11 of action for negligent misrepresentation, except there is no requirement of intent to induce
12 reliance. “In both causes of action, the plaintiff must plead that he or she actually relied on the
13 misrepresentation.” *Id.* (citing *Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1088-89 (Cal. 1993)).
14 “It is well-established in the Ninth Circuit that both claims for fraud and negligent
15 misrepresentation must meet Rule 9(b)’s particularity requirement.” *Neilson v. Union Bank*
16 *of Cal., N.A.*, 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003); *see also Lorenz v. Sauer*, 807 F.2d
17 1509, 1511-12 (9th Cir. 1987) (“Under California law, negligent misrepresentation is a species
18 of actual fraud....”).

19 As discussed above, Plaintiff has failed to allege sufficient facts to show that
20 Defendants made any misrepresentations to her or that she relied on Defendants’
21 misrepresentations. Plaintiff’s conclusory allegations regarding general misrepresentations do
22 not “provide the ‘grounds’ of [their] ‘entitle[ment] to relief.’” *Bell Atl. Corp. v. Twombly*, 550
23 U.S. at 555; *see also Ashcroft v. Iqbal*, 129 S. Ct. at 1950. Accordingly, Defendants’ Motion
24 to Dismiss Plaintiff’s sixth claim for negligent misrepresentation is granted.¹

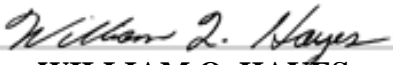
25 **V. Conclusion**

26 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 12) filed by

27
28 ¹ Defendants have also filed a Motion to Strike. The Complaint is dismissed;
accordingly, the Motion to Strike (ECF No. 13) filed by Defendants Bridgepoint Education,
Inc., Ashford University, and University of the Rockies is DENIED as moot.

1 Defendants Bridgepoint Education, Inc., Ashford University, and University of the Rockies
2 is GRANTED. Plaintiff's Complaint is DISMISSED. The Motion to Strike (ECF No. 13)
3 filed by Defendants Bridgepoint Education, Inc., Ashford University, and University of the
4 Rockies is DENIED as moot. Plaintiff may file a motion for leave to file a first amended
5 complaint, accompanied by a proposed first amended complaint, within thirty days from the
6 date of this order. If no motion is filed, the case will be dismissed without prejudice.

7 DATED: October 19, 2011

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9 **WILLIAM Q. HAYES**
10 United States District Judge
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